

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

JAMAICA HOSPITAL MEDICAL
CENTER,

Employer

and

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 30,

Petitioner

and

1199SEIU UNITED HEALTHCARE
WORKERS EAST,

Intervenor

Case No. 29-RC-253629

DECISION AND DIRECTION OF ELECTION

Jamaica Hospital Medical Center ("Employer") is a domestic corporation engaged in providing health care services, including the operation of an acute-care hospital and related health care facilities. On December 20, 2019,¹ International Union of Operating Engineers, Local 30 ("Petitioner") filed a petition ("Petition") under Section 9(c) of the National Labor Relations Act ("Act"), seeking to represent a unit of employees including all full-time, regular part-time and per diem plant supervisors employed at the Employer's facility located at 8900 Van Wyck Expressway, Jamaica, New York, but excluding all clerical employees, professional employees, guards and supervisors as defined under the Act.

1199SEIU United Healthcare Workers East ("Intervenor") intervened on the Petition in this case based on the collective-bargaining agreement it has entered with the Employer.

The Employer asserts that the petitioned-for unit is not appropriate because the plant supervisors are supervisors within the meaning of Section 2(11) of the Act. In the alternative, the Employer contends that, even if the plant supervisors are not supervisors under the Act, the petitioned-for unit is still not an appropriate unit under Section 9(a) of the Act because the plant supervisors share a community of interest with, and therefore should be included in, the bargaining unit of employees

¹ All dates hereinafter are in 2019 unless otherwise noted.

currently represented by the Intervenor under its existing collective-bargaining agreement with the Employer.

The Intervenor concedes that the plant supervisors in question are not supervisors under Section 2(11) of the Act,² but nevertheless asserts that the Petition must be dismissed because the petitioned-for unit is residual to the existing bargaining unit represented by the Intervenor.

A hearing was held before Annie Hsu, a hearing officer of the National Labor Relations Board ("Board"), and was continued before Shao Chen, a hearing officer of the Board.

Based on the factual record developed at the hearing, and for the reasons set forth below, I find that the plant supervisors are not supervisors within the meaning of the Act. I further find, in accordance with the Board's decision in *St. Mary's Duluth Clinic Health System*, 332 NLRB 1419 (2000), that the petitioned-for unit constitutes a residual unit to the Intervenor's non-conforming unit under the Board's Health Care Rule,³ and that such a residual unit comprising all unrepresented skilled maintenance employees is an appropriate unit under Section 9(a) of the Act. Accordingly, I will direct an election in the petitioned-for unit comprised of the Employer's plant supervisors.

Facts

The Employer's Operation

The Employer operates a 400-bed acute-care hospital and related health care facilities on an approximately one million square foot campus located in Jamaica, New York ("Employer's Facility"). The Employer's Facility consists of several different buildings, the largest two of which are commonly called "AB Building" and "C Building."

Annually, the Employer derives gross revenues in excess of \$250,000, and purchases and receives at its Jamaica, New York Facility goods and supplies valued in excess of \$5,000 directly from enterprises located outside the State of New York. [Board Ex. 2.]

The operation of the Employer's physical Facility relies upon a series of mechanical and electrical systems, including high and low-pressure boilers, steam systems, refrigeration systems, heating, ventilation and air conditioning (HVAC) systems, medical vacuum systems, fire safety and sprinkler systems, and emergency generators, among others. The Employer also performs certain construction work using its own "trades" employees, including plumbers, carpenters, electricians, painters and maintenance workers. Employees who perform construction and maintenance functions at the Employer's Facility, including the oversight and maintenance of the various mechanical and electrical systems, work in the Plant Operations/Maintenance Department, also known as the Engineering Department. The Engineering Department consists of about seven trade "shops," including the electrical shop, plumbing shop, HVAC shop, painting shop, carpentry shop and maintenance shop. There are approximately four or five employees employed in each shop.

² At the start of the hearing in this case, the Intervenor initially joined with the Employer's position that the plant supervisors are statutory supervisors.. However, at the close of the hearing, counsel for the Intervenor revised this position, stating that the Intervenor does not "believe that the [Employer] has met its burden of proof to establish [that] the plant supervisors are supervisors under Section 2(11) of the Act."

³ 29 CFR § 103.30, et seq.

Many of the shops also have a supervisor who directly oversees the work of employees within that shop. The shop supervisors report to the Chief Engineer, who in turn reports to the Assistant Director of Engineering, who reports to the Director of Engineering. Ultimately, the Director is responsible for all construction and maintenance operations within the Engineering Department. The Engineering Department routinely receives requests or "work orders" for construction and/or maintenance work to be performed at various parts of the Employer's Facility. The coordinator in the Engineering Department is responsible for receiving and dispatching work orders to the appropriate trade shops.

The Employer's Facility operates 24 hours per day, every day of the year. In order to maintain the various systems that the Facility relies on, Engineering Department employees staff three different shifts to ensure round-the-clock coverage. The "regular" daytime shift runs from 7:30 a.m. to 4:00 p.m. An evening shift runs from 3:00 p.m. to 11:00 p.m., and an overnight shift runs from 11:00 p.m. or 12:00 a.m. to 7:30 a.m. the following morning. The managerial staff of the Engineering Department, including the Director and Assistant Director, the Chief Engineer and many of the trade shop supervisors, works primarily during the "regular" daytime shift. The evening and overnight shifts are considered "after-hours" shifts.

The Role of Plant Supervisors

The Employer employs 14 individuals in the position of plant supervisor.⁴ The plant supervisors' job entails ensuring the continuous functional operation of the various electrical and mechanical systems throughout the Employer's Facility. Plant supervisors are also involved in facilitating construction and maintenance work at the Employer's Facility, as they are responsible for communicating and coordinating with project managers from the various trade shops within the Engineering Department to ensure that construction and maintenance work is done properly.

Plant supervisors must retain certain licenses and certifications to operate the Employer's mechanical and electrical systems. According to the plant supervisor "Position Description" set forth in the 2018 "Job Description & Performance Evaluation" issued to plant supervisor Timothy Kelly [ER Ex. 1], plant supervisors must have a "DOB Stationary Engineers License," an "FDNY Certificate of Fitness Q-01 (Refrigeration Systems Operating Engineers License)," an "FDNY Certificate of Fitness P-98 (Supervision of Fuel Oil Piping in Buildings)," an "FDNY Certificate of Fitness S-12 (Citywide Sprinkler Systems)" and an "FDNY Certificate of Fitness S-13 (Citywide Standpipe Systems)." Director of Engineering Edny Florissant testified that the plant supervisor position is the functional equivalent of a stationary engineer because of these licensing and certification requirements.

Furthermore, according to the plant supervisor "Position Description," a plant supervisor "Supervises the plant operating personnel and reviews that job assignments are completed." Additionally, the Position Description notes that plant supervisors perform periodic inspections of operating conditions, including investigating "problem areas" and recommending solutions to any observed problems; participate in improving operations and equipment; maintain records and forms related to plant operations; routinely visit all areas of the Employer's Facility as part of his/her

⁴ The record establishes the names of the 14 Plant Supervisors: Gerald McSloy, Ronald Jaipersaud, Ralph Talierno, Timothy Kelly, Kenneth Cohen, Donald Waldvogel, Michael McGroarty, John Mezzacappa, Thomas Keaney, Patrick O'Donoghue, Timothy Nolan, Armand Kapllani, John Rymdzionek, and Michael McGann.

inspection duties; assist other Engineering Department staff with tasks; and follow up with Engineering Department staff to check on the progress of work being performed.

Plant supervisors report directly to Chief Engineer Alexander Sesack. The plant supervisor Position Description clarifies that plant supervisors are required to inform the Chief Engineer, as well as the Director and Assistant Director as needed, of any "major problems" that may arise during the plant supervisor's shift.

There are at least two plant supervisors on duty at the Employer's Facility 24 hours a day, over the course of three different shifts. The plant supervisors' shift hours vary slightly from those of other Engineering Department staff noted above. Director Florissant testified that plant supervisors' morning shift runs from 6:00 a.m. to 2:30 p.m., although the Employer is flexible with regard to the start and end times for plant supervisors. The evening shift is from 2:30 p.m. to 10:30 or 10:45 p.m., and the overnight shift is from about 10:30 p.m. to 5:30 or 6:00 a.m. Michael McGroarty, who works as a plant supervisor primarily during the overnight shift, testified that his regular hours are from 10:00 p.m. to 6:00 a.m.

During the morning shift, multiple plant supervisors work in conjunction with the Chief Engineer and the Direct and Assistant Director of Engineering, who are also on duty during those hours. However, during the "after-hours" shifts, there are generally two plant supervisors on duty; no higher-ranking Engineering Department staff members are on duty at that time.

Collective-Bargaining History

The Intervenor has represented a bargaining unit of employees at the Employer's Facility for several decades. There is currently a collective-bargaining agreement ("CBA") in effect between the Intervenor and a multi-employer association called the League of Voluntary Hospitals and Homes of New York, of which the Employer is a member and a signatory to the CBA. The current agreement is effective through September 30, 2021.

Based on the uncontroverted representations of counsel for the Intervenor, the record reflects that the Intervenor represents approximately 3,000 employees at the Employer's Facility. However, the scope of the Intervenor's bargaining unit is not defined in the CBA, nor in any other documents or testimony in the record. Article I, Section (a) of the CBA provides that the Intervenor is the exclusive collective-bargaining representative of employees in a bargaining unit set forth in a separate "Stipulation I" entered between the Intervenor and each individual Employer signatory to the CBA. However, the "Stipulation I" that appears in the record is silent regarding the classifications of employees who are covered under the CBA. [Board Ex. 1.]

Meanwhile, Article I, Section (b) of the CBA explicitly excludes from the Intervenor's bargaining unit all "supervisory, confidential, executive and managerial employees."⁵ The Employer and the Intervenor contend that the Intervenor's bargaining unit comprises all employees at the Employer's facility who are not explicitly excluded from the unit under the terms of the CBA, with the

⁵ Also explicitly excluded from the Intervenor bargaining unit are "physicians, dentists, registered nurses, students whose performance of work at the Employer is a part of the educational course of study such students are pursuing, part-time employees who work a total of one-fifth (1/5) of the regular full-time work week or less for the job classification in which they work, temporary employees . . . and such other employees as excluded in the stipulations hereunto annexed."

exception of security guards, who are represented by a different labor organization. The record establishes that, aside from the disputed plant supervisors, non-supervisory skilled maintenance employees in the Engineering Department, including carpenters, electricians, engineers, painters, plumbers, mechanics, maintenance workers and foremen, are all included in the bargaining unit represented by the Intervenor. [ER Ex. 2.]

Plant supervisors have traditionally been excluded from the Intervenor's bargaining unit based on the Employer's belief that the plant supervisors are statutory supervisors and are, therefore, excluded from coverage under the CBA. To the extent that plant supervisors are found not to be supervisors under the Act, the Employer and Intervenor assert that they must then be included in the Intervenor's "wall-to-wall" bargaining unit supposedly covering all non-supervisory employees.

Supervisory Indicia of Plant Supervisors

Hiring, Discharging, Layoff and Recall

The record evidence shows that plant supervisors do not have any involvement in hiring or firing employees. Director Florissant testified that plant supervisors have no hiring authority, and plant supervisor McGroarty's testimony confirms that plant supervisors also do not make recommendations regarding hiring decisions, as they are not consulted about their opinions regarding whom the Employer should hire.

Director Florissant testified that plant supervisors are not authorized to terminate employees and that only the Employer's Human Resources (HR) Department can effectuate terminations. Thus, the evidence shows that plant supervisors do not possess the authority to discharge employees.

Director Florissant also testified that plant supervisors have no authority to lay off or recall employees who have been laid off.

Discipline

Director Florissant testified that plant supervisors have the authority take two forms of disciplinary action against employees: verbal warnings and short-term suspensions, but they must refer matters potentially requiring more serious discipline to the Chief Engineer and/or the Director or Assistant Director.

Short-Term Suspensions

Regarding suspensions, Florissant testified that, during the after-hours shifts, when no higher-ranking Engineering Department officials are on duty, the plant supervisor on duty has the authority to send an employee home early from his shift and have him exit the facility immediately. Florissant testified that plant supervisors may send employees home early where the employee engages in misconduct that could negatively affect patient care, although Florissant did not specify what kind of misconduct would constitute appropriate grounds for a plant supervisor to send an employee home early during after-hours shifts. During the regular daytime shift when higher-ranking officials are present, Florissant testified that plant supervisors would be required to report any observed employee misconduct to the Chief Engineer, the Assistant Director or the Director of Engineering and allow

those higher-ranking officials to make a decision regarding what action to take against the employee, if any.

Florissant initially acknowledged that no plant supervisor has ever exercised this alleged authority to send an employee home from his shift during the approximately 2 ½ years that Florissant has served as Director or Assistant Director in the Engineering Department. However, Florissant later recalled an incident during the second quarter of 2019 in which an employee engaged in unspecified misconduct at the "psych ward" of the Employer's Facility during one of the after-hours shifts, and the plant supervisor on duty at the time "got involved" and made the employee in question leave the Facility before the end of his shift. Florissant recalled that in the following days, HR followed up with further action in response to the employee's conduct. Florissant refused to provide further details about what occurred in this instance, citing confidentiality of the "HR situation." Florissant also could not recall the name of the plant supervisor involved in this incident. Florissant testified about no other instances in which a plant supervisor suspended another employee.

Contrary to Florissant's testimony, Plant supervisor McGroarty testified that as a plant supervisor, he has no authority to suspend employees or to dismiss them from their shifts. McGroarty further testified that he has never been provided with any instructions from the Employer regarding protocols for sending home early employees who engage in misconduct during the after-hours shifts.

Verbal Warnings

Director Florissant testified that plant supervisors are also authorized to issue "verbal warnings" to employees when they determine the employee's performance is substandard. Florissant testified that there were "a couple" of incidents within the past year in which unnamed plant supervisors gave verbal warnings to employees. Florissant testified that he recalled one incident, occurring at an unspecified time, where a maintenance worker had failed to properly perform a certain task, and in response, "a couple" of unnamed plant supervisors "pulled that individual aside and basically gave him a verbal warning." Thereafter, the plant supervisors referred the matter to the Chief Engineer, who later decided to issue the employee in question a documented verbal warning. Florissant did not provide any further details about this incident.

Florissant testified about another incident in which plant supervisor Gerry McSloy and another unnamed plant supervisor reprimanded HVAC mechanic Patrick Fortune because the plant supervisors believed he had failed to adequately "troubleshoot" a problem with the temperature in a particular area of the Employer's Facility. Fortune had been assigned to fix the temperature issue but was unable to do so, causing the plant supervisors to go to the area and attempt to fix it. Florissant testified that the plant supervisors were quickly able to diagnose and repair the problem and then reprimanded Fortune for his inability to complete the assignment. The plant supervisors then reported the incident to the Chief Engineer, telling him that they were not comfortable working with Fortune. The Chief Engineer, in turn, later had "a conversation" with Fortune regarding his behavior based upon the report given to him by McSloy and the other plant supervisor and reported the situation to Director Florissant. It is unclear in the record whether the Chief Engineer issued any formal discipline such as a documented verbal warning in this instance.

Florissant testified that the verbal warnings given to employees by plant supervisors are generally not documented in the employees' personnel file. However, if a plant supervisor reports an issue with an employee to the Chief Engineer or to the employee's direct supervisor within his specific

trade shop, then any subsequent discipline issued by the Chief Engineer or the direct supervisor will be recorded in the employee's personnel file.

The record reflects one example of a plant supervisor reporting an issue with an employee and the Employer subsequently issuing specific documented discipline based on the plant supervisor's report. According to a documented verbal warning issued to HVAC mechanic Rafael ("Ralph") Ortiz [ER Ex. 3], during the regular daytime shift on January 24, 2018, the Engineering Department had dispatched Ortiz to an operating room at the Employer's Facility to fix a problem with the heat in that room. Ortiz spent several hours trying to resolve the problem but was unable to do so. Ortiz called plant supervisor Gerry McSloy for help, and McSloy instructed Ortiz on how to solve the problem. Despite McSloy's instructions, Ortiz was still unable to fix the problem. McSloy e-mailed maintenance supervisor Taishwarnauth Deopersaud, Director Florissant and another Employer official, expressing McSloy's concern with what he perceived as Ortiz's consistent inability to resolve temperature issues at the Facility. McSloy reported that Ortiz would typically "fake and fumble just about every temperature call he is sent on" and not follow instructions. McSloy did not recommend that the Employer take any particular action against Ortiz, but he noted that he did not "see a lot of upside to this guy [Ortiz]." Relying on McSloy's report, Deopersaud subsequently issued Ortiz a documented verbal warning. [ER Ex. 3.] The documented verbal warning does not mention any recommendation provided by McSloy or any other plant supervisor. Director Florissant testified that but for McSloy's report about Ortiz's poor performance, management would likely not have known about Ortiz's mishandling of this situation and would not have issued him the verbal warning.

Contrary to Director Florissant's testimony, plant supervisor McGroarty testified that during his 15 years working as a plant supervisor for the Employer, he has never recommended that management issue discipline against any other employee. McGroarty further testified no one from management has ever spoken to him about disciplining employees, and the Employer has never asked McGroarty about the job performance of any other employee. McGroarty speculated that plant supervisor McSloy, in particular, may be more inclined to report employee performance problems or possible disciplinary issues to higher-ranking officials because McSloy used to work in management as the former chief engineer at the Facility. McGroarty testified that had he been confronted with the situation involving HVAC mechanic Ortiz, McGroarty would have likely spoken with the Chief Engineer about the matter and have him decide what to do about it. McGroarty noted that his understand of his role as plant supervisor was to defer to Chief Engineer to address any issues of concern regarding other employees' performance.

Transferring and Promoting

Director Florissant testified that the Employer considers the recommendations of plant supervisors in deciding whether to transfer or promote Engineering Department employees. Florissant recalled that the Employer decided to transfer mechanic Humberto Gutierrez from one unspecified area of the Employer's Facility into the plant or boiler room area of the Facility, in part based on the recommendations of plant supervisors. Gutierrez was working at one of the ancillary buildings adjacent to the main hospital at the Employer's Facility at a time when the Employer was short staffed in the plant within the hospital building. Florissant testified that the Employer temporarily assigned Gutierrez to the plant and had plant supervisors monitor his work and provide feedback regarding whether Gutierrez was a "good fit" working in the plant. Plant supervisors McSloy, Timothy Kelly and Kenneth Cohen all gave positive feedback regarding Gutierrez to Director Florissant and the Chief Engineer based on the employee's 25 years of experience at the Employer's facility, his knowledge of

certain equipment and their experience working with him. Florissant testified that he and the Chief Engineer decided to permanently transfer and effectively promote Gutierrez to a position in the plant based on the feedback they received from the plant supervisors.

Florissant also testified about another Engineering Department employee, Jerrell Soobrian, whom the Employer is considering promoting based on the recommendation of a plant supervisor. According to Florissant, Soobrian currently works as a maintenance worker in the "plumbing shop." Florissant testified that he intends to promote Soobrian to a potential new position in the Engineering Department that has not yet been approved by the Employer, in part based on the recommendation of plant supervisor McSloy, who has observed Soobrian's work and has spoken highly of him to Florissant. Florissant testified that McSloy's and other plant supervisors' recommendations account for about 30 percent of the basis of Florissant's decision regarding transfers and promotions.

Plant supervisor McGroarty testified that he has never "been involved" in transferring employees and that the Employer has never told him that transferring employees is something in which he can or should be involved.

Assigning and Directing Work

As noted above, the job of the plant supervisor entails making rounds throughout the Employer's Facility to identify areas in need of repair or maintenance. During the regular daytime shift, if a plant supervisor spots an issue while making his rounds, he reports it to the Engineering Department dispatcher or "work coordinator," who in turn assigns the job to the appropriate trade shop before the job is ultimately assigned to an employee. Before making the repairs, the employee must communicate with the plant supervisor to ensure it is safe to perform the work, and once completed, the plant supervisor verifies that the work has been done properly. Director Florissant testified that, in the event of an emergency, such as a leak or a lack of heat in a patient's room, plant supervisors may bypass assigning work through the coordinator and instead call for a repair worker to come to the scene immediately. According to Florissant, plant supervisors are responsible for identifying where there is an emergency and acting to fix it immediately by assigning an appropriate employee to the task.

During the after-hours shifts, there is no coordinator on duty. The only Engineering Department personnel on duty during those shifts are plant supervisors and two maintenance workers. Thus, when a plant supervisor spots an issue after-hours, the plant supervisor is responsible for determining whether it is a problem that needs to be addressed right away, or whether it should be addressed during the next regular daytime shift. Plant supervisor McGroarty testified that if there is a problem that needs immediate attention, such as a problem with the heat in a particular area of the Facility, then as plant supervisor, he would direct the maintenance worker on duty to attempt to resolve the issue. If the maintenance worker cannot resolve the problem, then McGroarty testified that he steps in to fix the problem himself. If an issue required the work of a particular tradesman or required certain systems to be taken offline, McGroarty testified that he would put in a work order and have the coordinator assign the work during the next regular daytime shift.

Scheduling

Overtime

Director Florissant testified that plant supervisors do not track employee's work hours or keep any records relating to payroll or time and attendance. Nevertheless, according to Florissant, plant supervisors occasionally recommend that the Employer schedule certain employees for overtime work. Florissant testified that during the summer of 2019, an unspecified plant supervisor requested that the Employer assign an unnamed employee to cover extra shifts as overtime, and that Florissant accepted that recommendation. Florissant further testified that he approves plant supervisor recommendations to give particular employees overtime shifts "100 percent of the time." However, the record does not reflect how often plant supervisors make these kinds of recommendations or specific examples of such recommendations.

In emergency situations, moreover, Florissant testified that plant supervisors are authorized to direct employees to continue working through their lunch breaks in order to complete the emergency work, so long as the plant supervisor reports the situation to higher-level management. Employees who work through lunch receive overtime pay for the extra work. Florissant's testimony indicates that higher-level managers must approve such overtime and they direct the timekeeper to record the extra hours so that employees get properly compensated.

Time Off and Shift Changes

Plant supervisor McGroarty testified that he has no role in approving employees' requests for time off from work. McGroarty testified that if an Engineering Department employee wishes to take time off, he would not ask McGroarty as plant supervisor. Instead, McGroarty testified that employees make time off requests to their direct supervisor in their particular trade shop. Similarly, Director Florissant testified that plant supervisors are not involved in approving time off requests, but rather the Chief Engineer is responsible to "approve everyone's time."

Likewise, Florissant testified that the Chief Engineer, and not the plant supervisors, determine whether an employee may change his shift. According to Florissant, if an employee desires a shift change, he must get that request approved by the Chief Engineer.

Accountability

The plant supervisors' job description included with their performance evaluations lists "supervises the plant operating personnel and reviews that job assignments are completed" as one of the "core responsibilities" of a plant supervisor. [ER Ex. 1.] Director Florissant expanded upon what that means in his testimony. Florissant explained that plant supervisors must check the work of maintenance workers and other Engineering Department employees and ensure that the work has been done properly. Similarly, when the Employer hires outside contractors to perform engineering or maintenance projects, plant supervisors are required to review the work of the contractors and ensure that it has been done properly. Florissant testified that if a plant supervisor finds that an employee has not done a job correctly, the plant supervisor is expected to train the employee on how to do the job properly and then report the situation to the Chief Engineer or the Assistant Director of Engineering. Plant supervisor McGroarty confirmed that he provides guidance to maintenance employees when they do not know how to perform a task, citing as an example an incident where he had to train an employee on how to manipulate certain gas valves in order to light a burner in the kitchen equipment at the Employer's Facility. McGroarty testified, however, that he viewed his responsibility in that situation as ensuring that the kitchen equipment was functioning properly, not to ensure that the maintenance employee involved was doing his job appropriately.

Florissant, however, testified that the Employer holds plant supervisors accountable for the performance of other Engineering Department employees. Florissant testified that plant supervisors "oversee" the work of employees and the Employer relies upon plant supervisors to report issues relating to other employees. Florissant acknowledged that no plant supervisor has been disciplined for his failure to appropriately supervise other employees, but he also testified that a plant supervisor could hypothetically be disciplined for a failure to supervise. When asked under what circumstances a plant supervisor could be disciplined for his failure to supervise other employees, Florissant explained that the plant supervisor must be aware of what the maintenance workers are doing because "not only the plant supervisor's responsible for the plant operation, but they're responsible for the well-being of the day-to-day operation of the Engineering Department within the whole hospital."

To the contrary, McGroarty testified that he was unaware that the Employer's evaluation of him depended on his performance in supervising others. McGroarty testified that, as far as he understood it, the Employer evaluated him based on his knowledge of the equipment at the Employer's Facility, his ability to operate efficiently, his safety awareness, his reliability and his attendance. He testified that he did not believe that an evaluation of his management of other employees was part of the Employer's assessment of his performance as a plant supervisor.

Other Supervisory Indicia

There is no evidence suggesting that plant supervisors adjust the grievances of other employees. Director Florissant testified that plant supervisors also do not participate in the Employer's evaluation of employees' job performance. However, Florissant clarified that plant supervisors provide Engineering Department managers with information that they use in preparing employee evaluations. There is no evidence that plant supervisors reward other employees.

Secondary Indicia

Method of Payment

Plant supervisors are paid hourly and are not salaried. Director Florissant estimated that full-time plant supervisors earn approximately \$90,000 per year, but on an hourly basis. Other "per diem" plant supervisors earn less per year because they work fewer hours. Plant supervisor McGroarty testified that his hourly rate of pay was approximately \$46.⁶ Plant supervisors are eligible for premium pay for overtime work. They are required to punch in and out of work, and they record their hours of work using the same time clock as Engineering Department employees in the bargaining unit represented by the Intervenor.

Higher-level managerial positions in the Engineering Department, meanwhile, including the Director, Assistant Director and Chief Engineer, are salaried positions. The Employer stipulated on the record that the Chief Engineer's annual salary is \$144,000. The Employer's Employee Handbook, moreover, states that "Generally, supervisory and management positions are exempt from the overtime provisions and do not qualify for overtime." [PET Ex. 1.]

⁶ There is no evidence in the record regarding the rates of pay of union-represented employees in the Engineering Department.

Offices

Plant supervisors have an office where they work within the boiler room or plant areas of the Employer's Facility. Director Florissant testified that maintenance employees also use the plant supervisors' offices to take breaks.

Uniforms

Plant supervisors do not wear uniforms. Director Florissant testified that other employees within the Engineering Department do wear uniforms, but he could not identify which employees are required to wear uniforms.

Oversight of Contractors

As noted above, plant supervisors are required to ensure that any outside contractors hired by the Employer to perform construction or maintenance work at the Facility do the work appropriately. During the after-hours shifts, they are also responsible for coordinating contractor work and ordering vendor services in the event of an emergency. For instance, plant supervisor McGroarty testified that in the event of an emergency leak after hours at the Employer's Facility, as plant supervisor, he would have to call in an outside plumbing contractor to address the issue. However, McGroarty testified that before calling in the outside vendor, he would be required to contact a higher-level manager, such as Director Florissant, in order to obtain guidance on how he should proceed. McGroarty stated that in these emergency situations, plant supervisors are not authorized to make decisions without calling a higher-level manager. McGroarty testified that he was expected to call higher-level managers for such guidance any time during the after-hours shifts, including in the middle of the night. He further described certain predetermined Employer guidelines for what plant supervisors should do in specified situations, such as when a person gets stuck in one of the Facility's elevators. If a contractor encounters an unexpected condition in the course of performing his work and requires permission from the Employer to change the scope of his work, then McGroarty, as plant supervisor, would refer any decisions in that regard to the Chief Engineer. McGroarty's testimony in this regard was un rebutted.

Thus, the evidence shows that plant supervisors have little role in overseeing the work of outside contractors. McGroarty made that clear when testifying that, "It's my job to operate the building, not to supervise the contractors." Nevertheless, McGroarty testified that, because it is the plant supervisor's job to ensure that the contractors perform their work in a manner that will not detrimentally impact the operation of equipment at the Employer's Facility, a plant supervisor is empowered to stop a contractor from doing work if he determines that it would pose a safety risk.

Community of Interest with Union-Represented Employees

The record reflects that during the hearing, Hearing Officer Chen requested that the Parties present additional witnesses to provide evidence relating to the community of interest, or lack thereof, between plant supervisors and employees within the bargaining unit represented by the Intervenor, but the Parties were unable to present any other witnesses. Evidence regarding the community of interest between plant supervisors and employees included in the Intervenor's unit is relevant to evaluate the Employer's and the Intervenor's claim that plant supervisors should be included in the Intervenor's existing unit.

Director Florissant provided some limited testimony concerning the community of interest between these groups of employees. Hearing Officer Hsu asked Florissant: "Rate of pay, manner of pay, overtime. . . vacations, insurance, pensions, bonus, use of facility, incentive plans, parking areas, clothing, use of time clock, restrooms, cafeteria, payment for lost time. Anything different with union employees on all those issues?" Florissant responded that nothing differed between plant supervisors and Intervenor-represented employees on those terms and conditions of employment.⁷ Florissant did not testify further about the community of interest issue. Florissant seemed to contradict his response when he later testified that plant supervisors are eligible for higher raises than those afforded to employees working under the Intervenor's collective-bargaining contract with the Employer. The record additionally establishes that plant supervisors, like Intervenor-represented employees, are hourly wage workers, as opposed to salaried, and they use the same time clock to punch in and out of work. Moreover, both plant supervisors and Intervenor-represented employees in the Engineering Department are commonly supervised by the Chief Engineer, the Assistant Director and Director of Engineering, although the employees in the Intervenor's bargaining unit may have an additional direct supervisor within their specific trade shop, while plant supervisors do not report to the trade shop supervisors.

Discussion

The Supervisory Authority Standard

Section 2(11) of the Act defines a supervisor as follows:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

The party asserting supervisory status has the legal burden of proving such status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *The Ohio Masonic Home, Inc.*, 295 NLRB 390, 393 (1989); *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979). To prove supervisory status under Section 2(11), the party must demonstrate that the individual has the authority to take the enumerated actions, and that the individual employs "independent judgment," which is "free from the control of others" in the exercise of that authority. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2006). The Board has stated that "judgment is not independent if it is dictated by or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." *Id.* The authority to recommend effectively, moreover, "generally means that the recommended action is taken with no independent investigation by superiors, not simply that the recommendation is ultimately followed." *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982); *Children's Farm Home*, 324 NLRB 61 (1997).

In addition, the Board may examine secondary indicia of supervisory status such as higher rates of pay, attendance at management meetings, and title. *See Airport 2000 Concessions, LLC*, 346 NLRB

⁷ Florissant's response in this regard counters other evidence in the record regarding discrepancies between plant supervisors and other Engineering Department employees, including the use of uniforms and differing rates of pay.

958, 968 (2006). Secondary indicia alone will not support a finding of supervisory status in the absence of evidence that an individual satisfies some of the enumerated indicia. *See id.* The Board construes a lack of evidence of supervisory authority against the party asserting it. *See Armstrong Machine Co.*, 343 NLRB 1149, 1149 fn. 4 (2004); *In re Dean and Deluca New York, Inc.*, 338 NLRB at 1048. In this case, the Employer has not established that the plant supervisors are supervisors within Section 2(11) of the Act.

Plant Supervisors Exercise None of the Primary Indicia of Supervisory Authority

Hiring, Discharging, Layoff and Recall

It is undisputed that plant supervisors do not hire or make effective recommendations to hire employees within the meaning of Section 2(11). There is likewise no evidence that plant supervisors are involved in the Employer's determinations concerning discharging employees, laying off employees or recalling laid off employees, as the record establishes that those functions are all performed by the Employer's HR Department in conjunction with the Director of Engineering.

Discipline

The Employer contends that plant supervisors have the authority to issue verbal warnings against Engineering Department employees and to dismiss an employee from working the remainder of his scheduled shift.

Regarding verbal warnings, it is undisputed that the Employer does not document in employee personnel files the "verbal warnings" plant supervisors are authorized to issue to employees. Instead, the evidence shows that what the Employer called "verbal warnings" issued by plant supervisors are more akin to coaching or verbal correction of employees regarding the performance of certain tasks. The evidence suggests that plant supervisors may report problems with an employee's performance to Engineering Department management, but the record establishes that it is ultimately up to higher-level supervisors in the Engineering Department to decide what type of disciplinary action to take, if any, in response to a situation referred to them by plant supervisors.

To constitute evidence of supervisory status under Section 2(11) of the Act, supervisory authority to discipline "must lead to personnel action without independent investigation by upper management." *Veolia Transportation Services*, 363 NLRB No. 98, slip op. at 7 (2016) (citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007) and *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 669 (2001)). Similarly, "a warning may qualify as disciplinary within the meaning of Section 2(11) if it 'automatically' or 'routinely' leads to job-affecting discipline, by operation of a defined progressive disciplinary system." *Veolia Transportation*, 363 NLRB No. 98, slip op. at 7 (citing *Oak Park Nursing Care Center*, 351 NLRB 27 (2007) and *Ohio Masonic Home*, 295 NLRB 390, 393-94 (finding that warnings were not disciplinary where the employer failed to demonstrate that it maintained a "defined progressive disciplinary scheme" in which warnings would "automatically affect job status or tenure").

Here, however, the Employer has not established that plant supervisors' verbal counseling of employees automatically or routinely results in a documented discipline of the employee that would become part of the employee's progressive disciplinary record. Rather, the evidence shows that higher-ranking officials, such as the trade shop supervisors, the Chief Engineer and the Director and Assistant Director of Engineer, are responsible for independently considering the information brought

to them by plant supervisors about employees' work performance, and these higher-ranking officials ultimately determine whether discipline should issue, including the issuance of an actual documented verbal warning.

The Employer presented evidence establishing that plant supervisors monitor the work of Engineering Department employees and may report problems with employee performance to higher-ranking managers. Here again, any evaluations of employee performance made by plant supervisors must be considered by higher-ranking officials before any disciplinary action is taken, and there is no evidence that the Employer routinely takes action against employees based solely on the information provided by plant supervisors. The evidence thus shows that plant supervisors do not evaluate employees for the purpose of imposing discipline or determining employee pay or job status, but rather they evaluate employees to ensure that the employee's work is done properly and safely, based on the plant supervisors' knowledge and experience. The Board, meanwhile, holds that under Section 2(11), "evaluations, made by a more experienced employee on the basis of his superior knowledge, do not establish supervisory status if they do not, by themselves, affect the wages or job status of the employees being evaluated." *Webco Industries*, 334 NLRB 608, 609 (2001) (citing *Elmhurst Extended Care Facilities*, 329 NLRB 535 (1999)). The ad hoc evaluations of employee performance made by plant supervisors in this case do not, by themselves, affect wages or job status of other employees without further investigation and action by higher-ranking officials, and therefore these evaluations do not help establish the supervisory status of plant supervisors.

The Employer further asserts that during after-hours shifts when no higher-ranking managers are present, plant supervisors are authorized to unilaterally send employees home early from their shifts if the plant supervisor determines that the employee engages in misconduct that could negatively affect patient care. Director Florissant, however, testified that in his 2 ½ years as Director of Engineering, there had been only one instance of a plant supervisor sending an employee home early from his shift. Plant supervisor McGroarty, meanwhile, testified that in his 15 years working for the Employer, he has never sent an employee home early from his shift, nor has the Employer ever provided him with any instructions authorizing him to send home early employees who engage in misconduct during the after-hours shifts.

Accordingly, the record establishes that plant supervisors, at best, only sporadically exercise disciplinary authority to send employees home early from their shifts and instances of such authority are very isolated in nature. Under Board law, "It is well settled that such isolated or sporadic exercise of authority is insufficient to establish supervisory status." *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997) (citing *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)). Accordingly, the record evidence pertaining to plant supervisors dismissing employees from their shifts is inadequate to prove that they possess Section 2(11) supervisory authority to discipline. Altogether, the evidence establishes that plant supervisors do not exercise sufficient disciplinary authority to render them supervisors under Section 2(11).

Transfers and Promotions

The Employer presented evidence showing that plant supervisors occasionally make recommendations to the Director of Engineering and/or the Chief Engineer in favor of the promotion or transfer of an Engineering Department employee. Director Florissant testified about two instances in which plant supervisors recommended that the Employer transfer and effectively promote other employees based on the plant supervisors' observations of the employees' work. In one instance, three

plant supervisors provided Engineering Department managers with positive feedback concerning the work of employee Humberto Gutierrez, and the managers considered that feedback in deciding to permanently transfer and effectively promote Gutierrez to a position in the plant. The other instance of plant supervisors recommending an employee for transfer and promotion involved an inchoate potential transfer of employee Jerrell Soobrian to a position that does not yet even exist, based in part on information managers received from plant supervisor Gerry McSloy. The evidence concerning this mere potential transfer demonstrates very little regarding the supervisory authority of plant supervisors.

Despite Florissant's testimony concerning plant supervisors, in one isolated instance, giving feedback that contributed to the transfer and promotion of employee Gutierrez, the evidence establishes that Florissant, who ultimately decides which employees to transfer or promote, does not base his decisions about transfers and promotions solely on the recommendations of plant supervisors. To the contrary, Florissant testified that plant supervisors' recommendations account for only about 30 percent of the factors that Florissant considers in deciding whom to transfer or promote. The record thus establishes that the Employer merely takes plant supervisors' feedback regarding employee performance into consideration when evaluating whether to implement a transfer or promotion. Rather, the Engineering Department managers conduct their own investigation of the employee in question, considering other factors before making any final decision regarding the transfer or promotion.

As noted above, for the purposes of evaluating supervisory indicia, to "effectively recommend" a personnel action such as a transfer or promotion, a purported supervisor's recommendation must be acted upon "without independent investigation by superiors." *ITT Lighting Fixtures*, 265 NLRB at 1481; *Children's Farm Home*, 324 NLRB at 61, *supra*. Whatever information plant supervisors give management in relation to employee transfers and promotions represent a mere fraction – 30 percent – of the factors the Director of Engineering considers in ultimately deciding who gets transferred or promoted. The majority of what the Employer considers in making transfer and promotion decisions comes not from plant supervisor recommendations, but rather from other, unspecified considerations gleaned from the Director's or Chief Engineer's own observations or investigations. Accordingly, plant supervisors do not effectively recommend transfers or promotions of other employees in a way that would confer upon them Section 2(11) supervisory status.

Assignment of Tasks and Responsibly Directing Employees

With regard to the plant supervisors' ability to assign or responsibly direct employees, assigning work generally refers to designating an employee's place of work (such as department), an employee's time (such as a shift), or assigning a significant task. *Oakwood Healthcare*, 348 NLRB at 689. In order to show that an alleged supervisor makes assignments and uses independent judgment in doing so, the individual must make a decision that is free from the control of others and also involves forming an opinion by discerning and comparing data. *See Springfield Terrace Ltd.*, 355 NLRB 937 (2010). "The assignment of tasks in accordance with an Employer's set practice, pattern or parameters, or based on such obvious factors as whether an employee's workload is light, does not require a sufficient exercise of independent judgment to satisfy the statutory definition [of a supervisor]." *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002). As the Board explained in *Oakwood Healthcare*, designating an employee as the person to regularly perform a particular task or set of tasks constitutes "assigning" within the meaning of Section 2(11), while directing an employee to perform a discrete task within the scope of the employee's pre-determined duties does not. 348

NLRB at 689 (“ad hoc instruction that an employee perform a discrete task” does not constitute assignment within the meaning of Section 2(11)).

Applying the foregoing principles, the record is clear that plant supervisors do not “assign” tasks to employees within the meaning of Section 2(11). The Employer has not established that plant supervisors independently designate any employee’s place of work, time of work, or the type of work employees are regularly assigned to do. The evidence shows that plant supervisors do not have the authority to change employees’ shifts. Furthermore, their assignment of work to other Engineering Department employees is limited to the assignment of discrete tasks on an ad hoc basis, and such assignment occurs only during emergencies or when no higher-level manager is on duty. At all other times, plant supervisors do not unilaterally assign tasks to employees, but rather submit work orders that allow a work coordinator to assign the jobs. Thus, the plant supervisors’ authority to assign even discrete tasks is, in large part, subject to the control of others within the Engineering Department. Moreover, the Employer presented no evidence to show that plant supervisors discern or compare data to form an opinion regarding which tasks to assign to which employees. Instead, their assignment of tasks to employees is of a routine nature based on “obvious factors” such as the exigency of a defective heating system or a leaky toilet. This type of assignment of tasks does not involve the exercise of independent judgment sufficient to confer supervisory status under Section 2(11). Furthermore, much of the work that a plant supervisor would assign an employee to perform is routine, such as fixing a toilet. The Board holds that assignment of routine tasks does not support a finding of supervisory status. *See Panaro and Grimes d/b/a Azusa Ranch Market*, 321 NLRB 811 (1996) (exercise of supervisory authority under Section 2(11) cannot be routine).

Plant supervisors likewise do not possess supervisory authority to responsibly direct employees, which requires that the alleged supervisor has the authority to direct the work and the authority to take corrective action if the work is not done. Moreover, there must be the prospect of adverse consequences for the putative supervisor if he or she does not take those steps. *Oakwood Healthcare*, 348 NLRB at 689-92. Again, in doing so, a supervisor must exercise independent judgment. *Id.* at 693.

In the case of plant supervisors in the present matter, the record fails to establish that plant supervisors have authority to take any corrective action if other employees’ work is not done properly. Both Director Florissant and plant supervisor McGroarty testified that plant supervisors are supposed to provide guidance and training to employees when they do not perform a task appropriately and may report an employee’s perceived poor performance to higher-level managers. However, the evidence does not establish that plant supervisors refer employees to higher-level managers for the purpose of imposing discipline. Instead, the record shows that plant supervisors report problems with other employees’ performance in order to ensure that the work gets done properly going forward. Furthermore, the evidence establishes that plant supervisors are not authorized to take corrective disciplinary action themselves, as discussed above. The only corrective actions a plant supervisor may take in response to an employee’s perceived poor performance are to verbally coach the employee and/or perform the task himself. In addition, the Employer has not established that plant supervisors face adverse consequences if they do not adequately supervise the work of others. In that regard, Director Florissant testified that he was unaware of a plant supervisor ever being disciplined for his failure to appropriately supervise other employees, while plant supervisor McGroarty testified that he did not believe his management or supervision of others was a factor in the Employer’s evaluation of his performance as a plant supervisor and has never been spoken to by the Employer about his conduct

in disciplining, or not disciplining, other employees. Accordingly, the evidence does not establish that plant supervisors responsibly direct employees.

Scheduling Overtime and Time Off

It is undisputed that plant supervisors do not set employees' schedules. The Employer, however, presented evidence suggesting that plant supervisors may recommend to higher-level managers that select employees be assigned overtime. The Board holds that the authority to assign overtime may establish assignment authority within the meaning of Section 2(11), but only if the evidence shows that the putative supervisor can require employees to work overtime or come into work when off-duty. See *Entergy Mississippi, Inc.*, 357 NLRB 2150, 2156–2157 (2011); *Golden Crest Healthcare*, 348 NLRB 727, 729 (2006); *Heritage Hall, E.P.I. Corp.*, 333 NLRB 458, 459 (2001) (declining to find supervisory status where alleged supervisors “have no authority to require or order off-duty employees to fill a particular shift.”). The Employer has made no such showing in this case, as the evidence establishes that plant supervisors, on occasion, merely recommend that certain employee get overtime and cannot themselves schedule employees for overtime.

The Employer presented evidence suggesting that plant supervisors may occasionally direct an employee to work through his regular lunch break and thereby accrue overtime, but only in emergency situations. Florissant testified that any time plant supervisors require employees to work through their breaks, they must report it to higher-level managers, who will then determine whether the timekeeper should record the extra hours so that the employee gets compensated for the extra work time. This testimony strongly indicates that ultimately it is up to the higher-level managers to approve the overtime, and the plant supervisor's role is merely recommending that an employee be allowed to work overtime. Moreover, the authority that plant supervisors have to direct employees to work overtime through their breaks is strictly limited to emergencies and is thus sporadic in nature and insufficient to establish supervisory status. See *Byers Engineering Corp.*, 324 NLRB at 741, *supra*.

Furthermore, the record establishes that plant supervisors lack the authority to approve employees' requests for time off from work or requests to change shifts. Accordingly, the evidence fails to establish that plant supervisors have any Section 2(11) supervisory authority in assigning employees' schedules.

Evidence of Secondary Supervisory Indicia Are Not Relevant

The Employer has failed to present sufficient evidence to establish that plant supervisors transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees. In the absence of evidence establishing that plant supervisors exercise any of the primary indicia of supervisory authority, it is unnecessary to consider the evidence of secondary supervisory indicia presented by the Employer. *Pacific Coast M.S. Industries Co., Ltd.*, 355 NLRB 1422, 1423 fn. 13 (2010) (citing *Training School at Vineland*, 332 NLRB 1412, 1412–1413 fn. 3 (2000)) (“Absent primary indicia of supervisory status, secondary indicia are not dispositive”). Therefore, I have not considered any secondary indicia of supervisory status in this case.

I find that the Employer has not met its burden to establish that its plant supervisors are supervisors within the meaning of Section 2(11) of the Act.

5. I find that the employees in the following unit constitute an appropriate unit for the purposes of collective bargaining:

All full-time and regular per diem plant supervisors employed by the Employer at its 8900 Van Wyck Expressway, Jamaica, New York facility, but excluding all other employees, guards, and supervisors as defined by Section 2(11) of the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to: (1) be represented for purposes of collective bargaining by INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 30; (2) be represented by 1199SEIU UNITED HEALTHCARE WORKERS EAST as part of its existing bargaining unit; or (3) not be represented by any labor organization.

A. Election Details

The election will be held on **Thursday, March 19, 2020**, from 5:30 a.m. to 7:00 a.m., and from 1:30 p.m. to 3:30p.m., in Room 7P of the Employer's facility located at 89-06 135th Street, Jamaica, New York.

B. Voting Eligibility

Eligible to vote are those in the units who were employed during the payroll period ending **February 21, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available

personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **March 2, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed. Notices will be posted in English only.

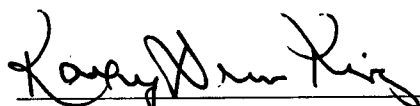
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Brooklyn, New York, on February 27, 2020.



Kathy Drew-King
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

